

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(21), the State Board of Education hereby adopts new Chapter 35, “Educational Standards and Program Requirements for Children’s Residential Facilities,” Iowa Administrative Code.

New Chapter 35 outlines the educational standards and program requirements for children’s residential facilities. 2016 Iowa Acts, Senate File 2304, addresses standards for and certification and inspection of children’s residential facilities. This legislation requires the Board to adopt rules governing educational programs and educational services provided by children’s residential facilities pursuant to 2016 Iowa Acts, Senate File 2304, section 11. This rule making follows that directive.

An agencywide waiver provision is provided in 281—Chapter 4.

Notice of Intended Action was published in the December 7, 2016, Iowa Administrative Bulletin as ARC 2852C. Public comments were allowed until 4:30 p.m. on January 6, 2017. A public hearing was held on December 27, 2016 and on January 6, 2017. Four persons attended the public hearings. Three public comments were received. From those comments a few minor changes were made. The Department also sua sponte removed references to juvenile homes and included the statute’s list of exclusions after reviewing the enabling statute. The persons attending the first public hearing asserted that Senate File 2304’s exemption from regulating religious curricula should, in effect, create a blanket exemption from this chapter for faith-based private entities. That assertion is incompatible with the language of Senate File 2304 and no change is made.

After analysis and review of this rule making, no impact on jobs has been found.

These rules are intended to implement 2016 Iowa Acts, Senate File 2304.

These rules will be effective on March 22, 2017.

The following amendment is proposed.

Adopt the following **new** 281—Chapter 35:

CHAPTER 35

EDUCATIONAL STANDARDS AND PROGRAM REQUIREMENTS FOR CHILDREN’S

RESIDENTIAL FACILITIES

281—35.1(282) Scope. These rules apply to the provision of educational programs and educational services in children’s private residential facilities.

281—35.2(282) Intent. It is the intent of this chapter that all school-age children, including children younger than 5 years of age and older than 18 years of age, who are eligible children to receive special education, who are living in any children’s residential facility operated by a private entity providing residential care to children within the state of Iowa, which is not otherwise exempted by the Iowa Code, shall be provided an appropriate education.

281—35.3(282) Definitions. For purposes of this chapter, the following definitions shall apply:

“*Child*” or “*children*” means an individual or individuals under 18 years of age. A child is “school-age” if the child is at least 5 years of age on September 15 but not more than 21 years of age or if the child is younger than 5 years of age or older than 18 years of age and is an eligible child to receive special education.

“*Children’s residential facility*” means a facility operated by a private entity and designed to serve children who have been voluntarily placed for reasons other than an exclusively recreational activity outside of their homes by a parent or legal guardian and who are not under the custody or authority of the department of human services, juvenile court, or another governmental agency as defined by 2016 Iowa Acts, Senate File 2304, section 1. “Children’s residential facility” shall also be referred to as a “private facility”, but does not include an entity providing any of the following:

- a. Care furnished by an individual who receives the child of a personal friend as an occasional and personal guest in the individual’s home, free of charge and not as a business.
- b. Care furnished by an individual with whom a child has been placed for lawful adoption, unless that adoption is not completed within two years after placement.
- c. Child care furnished by a child care facility as defined in section 237A.1.
- d. Care furnished in a hospital licensed under chapter 135B or care furnished in a health care facility as defined in section 135C.1.

e. Care furnished by a juvenile detention home or juvenile shelter care home approved under section 232.142.

f. Care furnished by a child foster care facility licensed under chapter 237.

g. Care furnished by an institution listed in section 218.1.

h. Care furnished by a facility licensed under chapter 125.

i. Care furnished by a psychiatric medical institution for children licensed under chapter 135H.

“Private entity” means any residential entity that is not a public entity as defined below.

“Public entity” means any facility that houses school-age children and children eligible to receive special education who are under the jurisdiction of the department of corrections, department of human services, board of regents, or other governmental agency and that has current authority to offer direct instruction to children from funding available to one of the above agencies. A public entity shall not bill any Iowa school district or area education agency for educational costs.

281—35.4(282) Establishing an appropriate educational program. A private entity operating a children’s residential facility shall not accept any child of school age or a child who is eligible to receive special education services until the entity has been issued a certificate of approval by the department of human services and has established an appropriate educational program under this rule and appropriate educational services under rule 281—35.6(282).

35.4(1) A private entity operating a children’s residential facility may establish an appropriate educational program in one of three ways:

a. Becoming an accredited nonpublic school through the standards and accreditation process described in Iowa Code section 256.11 and adopted by rule by the state board of education.

b. Utilizing a written contract stating that the public school district in which the private facility is located will provide the educational program and educational services, either directly or by supervision of appropriately licensed staff of the public entity.

c. Utilizing a written contract stating that an accredited nonpublic school which is located within the same school district boundaries in which the private facility is located will provide the educational

program and educational services, either directly or by supervision of appropriately licensed staff of the accredited nonpublic school. This contract may require that some services related to federal programs and special education be provided by the school district which is otherwise the requirement for the accredited nonpublic school.

35.4(2) The educational program and educational services delivered through a contract established between a private entity and the school district or accredited nonpublic school shall meet, at a minimum, the standards established by rule 281—12.10(256).

35.4(3) Any contract established by the private entity with a school district or accredited nonpublic school shall, at a minimum, include, but not be limited to, the physical location of the educational program and educational services; the parties involved; the purpose of the contract; the program description in detail; the powers, duties and authority of each party to the contract; the jurisdiction of each party to the contract; the dispute resolution procedure; specifications of the services that are contracted, if any, and how costs are to be calculated; billing procedures; how each legal, testing, and reporting requirement will be met; ownership of property belonging to the party that paid the cost or contributed the item; contract amendment procedures; contract approval procedures; contract renewal and termination procedures; duration of the contract; cross indemnification; application of laws, rules and regulations; binding effect; severability; assurances; and signature of the school board with legal power to authorize the terms of the contract. Any contract developed under this rule shall be submitted to the department of education for review and approval by the director of the department of education prior to enactment. A contract that fails to comply with any of the requirements of this chapter is void.

35.4(4) Children residing in a private facility operated by a private entity who require treatment or security throughout the day shall have classrooms made available at the site of the private facility at no cost to the school district providing the instructional program or instructional supervision. The classroom must meet the requirements for educational space for children in accordance with the Iowa Code, administrative rules, and state fire marshal regulations.

35.4(5) Nothing included in this chapter shall be interpreted to regulate religious education curricula at the private entity.

281—35.5(282) Display of notices; fees.

35.5(1) A private entity operating a private facility under this chapter shall display prominently in all of the private entity's major publications and on its Internet site a notice accurately describing the educational program and educational services provided by the private entity and who is providing the program and services.

35.5(2) The private entity operating a private facility shall include in any promotional, advertising, or marketing materials available by print, broadcast, or via the Internet or any other means all fees charged by the private entity for the educational program and educational services offered or provided and the entity's refund policy for the return of refundable portions of any fees. This subrule shall not apply to sponsorship by a private entity of public radio or public television broadcasts.

35.5(3) If the educational programs and educational services are provided by or through the public school district of location, all fees related to the educational programs and educational services shall be authorized by the Iowa Code, including but not limited to Iowa Code chapter 282, and shall be the same fees as charged to other enrolled students. The public school district cannot charge nonresident students a higher fee than resident students.

281—35.6(282) Provision of appropriate educational services.

35.6(1) Private entities shall fully cooperate with the area education agency and school district in which the facility is located to fulfill the area education agency's responsibilities for child find under 281—Chapter 41. A child shall be made available for evaluation and provision of services for which the child is eligible.

35.6(2) If a child does not require treatment or security by the private entity in such a time or manner as is required to remain on the campus of the private facility, a child with an individual education plan shall be provided special education instruction and related services with other nondisabled children within the least restrictive environment to the maximum extent appropriate.

35.6(3) The area education agency in which the private facility is located, the school district of residence, and other appropriate public or private agencies or private individuals involved with the care

or placement of a child shall cooperate with the school district in which the private facility is located in sharing educational information, textbooks, curriculum, assignments, and materials in order to plan and to provide for the appropriate education of the child living in a private facility and to ensure academic credit is granted to the child for instructional time earned upon discharge from the private residential facility.

35.6(4) A private facility that houses eligible children who are 4 years of age by September 15 of the school year shall notify the parents or legal guardians of these eligible children about the opportunities to access quality preschool programs. Children whose parents are Iowa residents may access the statewide voluntary preschool program under 281—Chapter 16 at no cost to the parents, and transportation will be provided by the public school district in which the statewide voluntary preschool provider is located from its statewide voluntary preschool programs funding. Children whose parents are not Iowa residents may access the statewide voluntary preschool programs, if space is available, through a tuition and transportation agreement with the public school district in which the statewide voluntary preschool program provider is located.

281—35.7(282) Reporting. A private entity shall comply with requests by the Iowa department of education for basic educational and financial information.

These rules are intended to implement 2016 Iowa Acts, Senate File 2304.